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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,714	02/28/2002	Eberhard Kinkelin	25045-12	1740

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EXAMINER

GOFF II, JOHN L

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 01/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/085,714

Applicant(s)

KINKELIN ET AL.

Examiner

John L. Goff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 7-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group I, claims 1-6, in the response received 10/3/03 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Information Disclosure Statement***

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 requires "said triethylene glycol is present in an amount between 5 and 60 mol % and said triethylene glycol is present in an amount between 0 and 40 mol %". It is unclear what is required by the claim. The specification discloses triethylene glycol is present in an amount between 0 and 40 mol % (See page 7, paragraph 24), and as such it is suggested to delete "said triethylene glycol is present in an amount between 5 and 60 mol %". Additionally in line 4 of the claim delete "ins" and insert therein - - in - -, and there is insufficient antecedent basis for "high molecular weight" in line 3.

*Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 4, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Frankosky (WO 91/09166).

Frankosky discloses a method of bonding a hydrophilic copolyetherester film to a polyester batt (i.e. fabric) using a hotmelt polyester adhesive (melting point of 150 °C) wherein the bonded composite has an improved ability to avoid delamination. Frankosky teaches the film (directly bonded to the polyester batt through the layer of adhesive) may comprise a single layer of hydrophilic copolyetherester or a multilayer laminate of hydrophilic copolyetherester and hydrophobic copolyetherester with the hydrophilic copolyetherester film formed from

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terephthalic acid and polyethylene glycol (molecular weight of 2000) (Page 2, lines 35-38 and Page 3, lines 1-40 and Page 4, lines 1-40 and Page 5, lines 1-20 and Examples 1-4).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frankosky as applied in paragraph 7 above, and further in view of Mahler (U.S. Patent 5,418,044) or the admitted prior art (Specification pages 1-3).

Frankosky as applied above teaches all of the limitations in claim 3 except for an express teaching that the hydrophobic copolyetherester film has all of the claimed characteristics.

However, it is noted that the hydrophobic copolyetherester film taught by Frankosky has the same long chain and short chain units as those claimed, and one of ordinary skill in the art at the

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time the invention was made would have readily appreciated using as the hydrophobic copolyetherester film taught by Frankosky any of the well known and conventional films in the art having the same disclosed long chain and short chain units such as the hydrophobic copolyetherester film suggested by Mahler or the admitted prior art as only the expected results would be achieved.

Mahler discloses a hydrophobic copolyetherester film formed of the same long chain and short chain units as the hydrophobic copolyetherester film taught by Frankosky that has the same characteristics as those in claim 2 (Column 1, lines 13-15 and Column 4, lines 49-68 and Column 5, lines 1-19).

The admitted prior art discloses it is known to bond a hydrophobic copolyetherester film (such as Sympatex a film formed of the same long and short chain units as the hydrophobic copolyetherester film taught by Frankosky and having the same characteristics as those in claim 2) to a polyester fabric or interlining using a polyester or copolyester based hot melt adhesive. The admitted prior art teaches the adhesive is applied by any of the known methods such as scatter coating, double dot coating, past coating, or paste-dot coating. However, the admitted prior art teaches that these laminate are not resistant to multiple washings at 60 °C (Paragraphs 4, 7, and 10).

10. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frankosky as applied in paragraph 7 above, and further in view of the admitted prior art.

Frankosky as applied above teaches all of the limitations in claim 6 except for a specific recitation of how the hotmelt polyester adhesive is applied. However, Frankosky teaches that any well known and conventional technique can be used to apply the adhesive such that it would

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have been obvious to one of ordinary skill in the art at the time the invention was made to apply the hotmelt polyester adhesive taught by Frankosky using any of the well known and conventional techniques for applying hotmelt polyester adhesives such as paste dot coating, powder dot coating, scatter coating, etc. as these were well known techniques in the art for applying polyester adhesives as shown for example by the admitted prior art (See paragraph 9 for the teachings of the admitted prior art) and only the expected results would be achieved.

11. Claims 1, 2, and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horn (U.S. Patent 5,447,783) in view of either one of Tanaka et al. (U.S. Patent 4,130,603), Frankosky, or the admitted prior art.

Horn discloses a method of bonding a multilayer laminate comprising a hydrophilic copolyetherester layer (formed from terephthalic acid and polyethylene glycol or butanediol (molecular weight of 400-3500)) and a hydrophobic copolyetherester layer to a polyester fabric using conventional laminating adhesives to form a bonded composite having an improved ability to avoid delamination (Column 1, lines 6-49 and 56-58 and Column 2, lines 32-34 and Column 3, lines 4-7 and 43-48 and Column 7, lines 30-40 and Column 9, lines 45-58 and Column 10, lines 8-17). Horn is silent as to a particular adhesive for laminating copolyetherester multilayer to the polyester fabric. However, Horn teaches conventional adhesives are used such that it would have been obvious to one of ordinary skill in the art at the time the invention was made to use as the laminating adhesive taught by Horn any of the well known and conventional adhesives for laminating polyester layers (e.g. copolyetherester layer to a polyester fabric) such as those suggested by any of Tanaka et al., Frankosky (See paragraph 7 for the teachings of Frankosky), or the admitted prior art (See paragraph 9 for the teachings of the admitted prior art).

Tanaka et al. disclose a hotmelt copolyester adhesive useful for bonding together polyester layers in textile articles to give the textile articles improved resistance to delamination. Tanaka et al. teach the adhesive is applied by techniques such as dotting or scattering (Column 1, lines 7-14, 38-43, and 57-61 and Column 2, lines 8-11 and 28-32 and Column 3, lines 49-53).

12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Horn and either one of Tanaka et al., Frankosky, or the admitted prior art as applied in paragraph 10 above, and further in view of either one of Mahler or the admitted prior art.

Horn as modified by either one of Tanaka et al., Frankosky, or the admitted prior art as applied above teach all of the limitations in claim 3 except for an express teaching that the hydrophobic copolyetherester film has all of the claimed characteristics. However, it is noted that the hydrophobic copolyetherester film taught by Horn has the same long chain and short chain units as those claimed, and one of ordinary skill in the art at the time the invention was made would have readily appreciated using as the hydrophobic copolyetherester film taught by Horn as modified by either one of Tanaka et al., Frankosky, or the admitted prior art any of the well known and conventional films in the art having the same disclosed long chain and short chain units such as the hydrophobic copolyetherester film suggested by Mahler (See paragraph 9 for the teachings of Mahler) or the admitted prior art (See paragraph 9 for the teachings of the admitted prior art) as only the expected results would be achieved.

13. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of Horn or Frankosky.

The admitted prior art discloses it is known to bond a hydrophobic copolyetherester film (such as Sympatex) to a polyester fabric or interlining using a polyester or copolyester based hot



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melt adhesive. The admitted prior art teaches the adhesive is applied by any of the known methods such as scatter coating, double dot coating, past coating, or paste-dot coating. However, the admitted prior art teaches that these laminate are not resistant to multiple washings at 60 °C (Paragraphs 4, 7, and 10). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use as the copolyetherester taught by the admitted prior art a multilayer comprising a hydrophilic copolyetherester layer and a hydrophobic copolyetherester layer as it was well known in the art to include in the copolyetherester layer a hydrophilic layer as shown for example by either one of Horn (See paragraph 11 for the teachings of Horn) or Frankosky (See paragraph 7 for the teachings of Frankosky) to form a laminate with the ability to avoid delaminating.

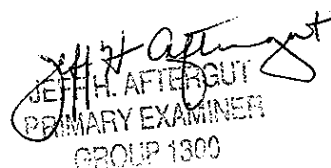
### *Conclusion*

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **John L. Goff** whose telephone number is (571) 272-1216. The examiner can normally be reached on M-F (7:15 AM - 3:45 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.



John L. Goff



JEFF H. AFTERGUT  
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